Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

WALTER A. COPENHAVER

Petitioner,

v.

FEDERAL HOME LOAN MORTGAGE CORPORATION

SOURCE ONE MORTGAGE SERVICES CORPORATION

Respondents.

On Petition For a Writ of Certiorari
to the United States Court of Appeals for
the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

Walter A. Copenhaver
In Propria Persona
8716 Gazelle Drive
El Paso, Texas 79925 - 4912
(915) 778 - 38 93

40pp

QUESTIONS PRESENTED

1. Is a Federal entity, in this case Federal Home Loan Mortgage Corporation a party to a cause when it appears on the docket as the creditor in that cause?

See Appendix C.
A certified docket of bankruptcy cause number 98-31219-LK, entry number seven (7) dated 8/13/98, on page 2.

2. Are State Statutes, in this case those of Texas, to be followed by Source One Mortgage Services Corporation, and Federal Home Loan Mortgage Corporation or can they be disregarded along with those of Legal Right?

See Appendix D.
Texas Property Codes, Title 5. Exempt Property and Liens, Subtitle B. Liens, Chapter 51. Provisions Generally Applicable to Liens, Sec. 51.002. Sale of Real Property Under Contract Lien.

3. Is Rule Number 12, of The Federal Rules of Appellate Procedure optional?

See Appendix C.
As to the usage and interpretation of this Rule by the Court of Appeals Fifth Circuit. Counsel for Source One Mortgage Services Corporation did not present Form of Appearance for 222 days.

4. Is tampering an accepted practice by Courts in General?

See Appendix D.
With respect to all those supposed errors that kept Appellant from finding where his appeal had been sent to and when it had been sent.

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

WALTER A. COPENHAVER
8716 Gazelle Drive
El Paso, Texas 79925-4912

FEDERAL HOME LOAN MORTGAGE CORPORATION
8609 West Wood Center Drive
Vienna, Virginia 22183

JACK O'BOYLE
P. O. Box 815369
Dallas, Texas 75381
Attorney for Federal Home Loan Mortgage Corporation

SOURCE ONE MORTGAGE SERVICES CORPORATION
27555 Farmington Road
Farmington Hills, Michigan 48334-3357

DIANA E. STEVENS
Balcom, Mann & Stevens, P. C.
550 Westcott Street, Suite 560
Houston, Texas 77007
Attorney for Federal Home Loan Mortgage Corporation

JUNE ANN MANN
Balcom, Mann & Stevens, P. C.
550 Westcott Street, Suite 560
Houston, Texas 77007
Attorney for Source One Mortgage Services Corporation

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TABLE OF CITED AUTHORITIES

STATUTES AND RULES

FEDERAL

FEDERAL CIVIL JUDICIAL PROCEDURE AND RULES (1999), CHAPTER 5 - DISTRICT COURTS, §124, §134.

TITLE 28 U.S.C., PART I, CHAPTER 5, § 124 (d) (3), § 134 (b).

FEDERAL RULES OF APPELLATE PROCEDURE, TITLE II, § 4 (a)

FEDERAL RULES OF APPELLATE PROCEDURE, TITLE II, § 12 (b)

STATE

The Texas Statutes

Property Code, Title 5. Exempt Property and Liens, Subtitle B. Liens, Chapter 51. Provisions Generally Applicable to Liens., Sec. 51.002. Sale of Real Property Under Contract Lien.

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Appendix F.	Incorrect Appeal Caption Walter A. Copenhaver vs. Phyllis Bracher Dated 12/18/98.	25a

In the

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

The petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the United States Court of Appeals appears in Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the Western District of Texas, Midland - Odessa Division appears in Appendix B to the petition and is in the record of the court of appeals.

STATEMENT OF JURISDICTION

The date on which the United States Court of Appeals decided my case was on April 12, 2000. No petition for rehearing was filed in my case. Motion filed by Appellant Walter Alexander Copenhaver to stay the mandate pending a petition to the Supreme Court for a writ of certiorari on April 26, 2000, a Court Order was filed denying motion of appellant for stay of the issuance of the mandate pending petition for writ of certiorari on May 22, 2000.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The 14 Amendment is not by its terms applicable to the federal government. However, actions by the federal government that classify individuals in a discriminatory manner will, under similar circumstances, violate the due process of the fifth amendment.

FEDERAL REGULATIONS

Federal Rules of Appellate Procedure, TITLE II, § 4 (a).

Federal Rules of Appellate Procedure, TITLE II, § 12 (b).

STATE

The Texas Statutes

Property Code, Title 5. Exempt Property and Liens, Subtitle B. Liens, Chapter 51. Provisions Generally Applicable to Liens., Sec. 51.002. Sale of Real Property Under Contract Lien.

STATEMENT OF THE CASE

United States Bankruptcy Court for the Western District of Texas, Waco Division

On September 6, 1998, Appellant, "Copenhaver," filed a Voluntary Chapter 13 Petition. On September 30, 1998, Bankruptcy Judge Larry E. Kelly of the United States Bankruptcy Court for the Western District of Texas, Waco Division signed an Order Granting Motion for Relief From Automatic Stay Prejudice Against Refiling for 180 Days.

Since the Federal Government was a party to this case, Federal Home Loan Mortgage Corporation (Please see Appendix C, Bankruptcy Court's docket, entry number 7, page 9a), Copenhaver entered a timely appeal thirty (30) days after the entry of the order terminating the stay. Copenhaver according to the Federal Rules of Appellate Procedure, Rule 4. Appeal as of Right - When Taken in section (a), paragraph 1, had this right - " . . . but if the United States or an Officer or agency thereof is a party, the notice of appeal may be filled by any party within 60 days after such entry." Copenhaver, filed a "Notice of Appeal," on October 30, 1998, with regard to the order terminating stay. Copenhaver's bankruptcy case was dismissed on October 20, 1998, by Trustee's Order for Summary Dismissal for Failure to Timely Commence Payments Under Debtor's, Copenhaver's, Plan. Copenhaver attempted to obtain an Injunction on November 2, 1998 by Motion to Petition Injunction under "Notice of Appeal" Due to Immediate and Irreparable Harm against the foreclosure sale of his Home scheduled for sale on November 3, 1998. Copenhaver filed, in the bankruptcy court, because he was unable to find the appeal in the District Court for the Western District of Texas, El Paso Division.

The "Notice of Appeal" had as yet not been sent nor had it been docketed. The "Notice of Appeal" would not be docketed until December 18, of that year, improperly in the District Court for the Western District of Texas, Midland - Odessa Division (please see Appendix page 25a). Against the "Order for Summary Dismissal for Failure to Timely Commence Payments Under Debtor's Plan,"

entered by the Trustee on October 20, 1998.

Foreclosure sale of the Home was conducted on November 3, 1998, Source One Mortgage Services was "Source One" the successful bidder at the sale. But, the foreclosure sale was inappropriate and illegal. The sale did not comply with the Texas Statutes, Property Code, Title 5. Exempt Property and Liens, Subtitle B. Liens, Chapter 51. Provisions Generally Applicable to Liens, Sec. 51.002. Sale of Real Property Under Contract Lien.:

> Briefly, the trustee under a deed of trust, in Texas, must: In the event that the property is used as the residence of the debtor, the debtor must be given **twenty days** opportunity to cure any default prior to posting notice of foreclosure. Notice must then be given prior to acceleration, in accordance with the note and deed of trust. Then the trustee under a deed of trust must give **twenty-one** days prior notice of foreclosure.

If the debtor must be given twenty (20) days to cure, and twenty-one (21) days prior notice of foreclosure the sum of these two quantities is forty-one (41) days. Between the "Order Granting Motion for Relief From Automatic Stay Prejudice Against Refiling for 180 Days" given on September 30, and November 3, date of the foreclosure sale, there are only thirty-four (34) days. So the foreclosure sale of my home does not comply with the Texas Property Code.

On December 1, 1998, bankruptcy Judge Larry E. Kelly signed an Order Denying "Motion to Petition Injunction under "Notice of Appeal" due to Immediate and Irreparable Harm." The motion was denied because the Notice of Appeal was untimely filed and because Appellant's bankruptcy case had already been dismissed. Thereby relinquishing the bankruptcy court's jurisdiction on the matter. This was convenient since it left Copenhaver without any recourse to the Bankruptcy Court or to the District Court which at that time did not know where the appeal was.

On December 30, 1998, "Notice of Appeal," was finally found and docketed as of December 18, 1998 in the United States District Court, Western District of Texas, El Paso Division, Case Number: 98 - CV - 502, Jurisdiction: Federal Question, Cause 28 U. S. C. § 1334. In truth the "Notice of Appeal" was filed in the Midland-Odessa Division of the Western District of Texas. The appellant would not have known where to obtain an Injunction against the foreclosure sale, held in El Paso, Texas, and 341 miles away from Midland - Odessa. Even if he had known of the location of the "Notice of Appeal" and if it had been docketed which it was not.

United States District Court for the Western District of Texas, Midland - Odessa Division

On February 1, 1999, "Motion to Dismiss Bankruptcy Appeal" by Source One Mortgage Services Corporation was presented to the District Court in Midland - Odessa. The Appellant objected to the proceedings being held in District Court of Midland - Odessa and to the appointment, by the Midland - Odessa District Court Judge Royal Furgeson of Source One Mortgage Services Corporation's counsel to give the court a summation of the proceedings, and cite cases to the court for consideration.

On March 15, 1998, final Judgement was rendered by Judge W. Royal Furgeson, Jr., "Order Granting Appellee's Request for Dismissal of Appeal, Dismissing Debtor-Appellant's Appeal, and Overruling Appellant's Objections."

United States Court of Appeals, Fifth Circuit

Notice of appeal from the judgement rendered by Judge W. Royal Furgeson, Jr., was filed by the United States Court of Appeals, Fifth Circuit on April 19, 1999.

On December 3, 1999, counsel for Source One files appearance form, as had been ordered filed two hundred and twenty two days before by Charles R. Fulbruge III, Clerk of the U. S. Court of Appeals, Fifth Circuit in accordance with Rule 12. Docketing the Appeal; Filing a Representation Statement; Filing the Record, (b). December 3, 1999, the Record on appeal is released to the attorney June Ann Mann counsel for Source One.

December 21, Appellant, requests that Charles R. Fulbruge III Clerk of the U. S. Court of Appeals comply with his order of April 19, 1999 to the effect that "If you fail to do so we will remove your name from our docket in this case . . . We cannot release official records on appeal unless you have entered an appearance . . ."

Record on appeal is released (two hundred and twenty-two) 222 days after counsel for Source One was to have filed a Form of Appearance.

June Ann Mann Counsel for Source One said ". . . Appellant has slept on his rights, if any, and should not be allowed any relief, . . . Counsel for Source One has satisfied the spirit, if not the letter, of the rules."

With finality on April 12, 2000 Appellate Court Judges stated that "We dispose of all outstanding motions herein and affirm the district court." Additionally, the appellate judges ignore the fact that on the Bankruptcy docket entry number seven (7) dated 8/13/98 "Response by Creditor Federal Home Loan Mortgage Corporation . . ." and state that ". . . the United States is not a party here. Although Copenhaver has included the Federal Home Loan Mortgage Corporation ("Freddie Mac") in the caption in recent filings, this entity was not involved from the beginning . . . ," (please see Appendix, page 21a). The statements made by the appellate judges are a complete falsehood. Clearly violating the Constitution of the United States of America, Amendments V, and XIV, also Texas Property Code, Sec. 51.002.

REASONS FOR GRANTING THE WRIT

Introduction

Rule 10 of the Rules of the Supreme Court of the United States, says that "Review on a writ of Certiorari . . . will only be granted for compelling reasons." And in the subparagraph (a) that the Supreme Court will only exercise its supervisory power if a court "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court."

In the proceedings that are presented by the appellant not only has the Court of Appeals for the Fifth Circuit departed from the accepted and usual course of judicial proceedings and sanctioned such departure by lower courts that it has literally made a travesty of justice. All in an accomplished effort to protect the right of the government entity, Federal Home Loan Mortgage Corporation, over the rights of an individual, Walter A. Copenhaver, and to his detriment - the loss of his home.

Reasons for Granting The Petition

1. The evidence that is being presented confirms beyond any doubt that Federal Home Loan Mortgage Corporation was and is a party to this case (Please see Appendix C, page 7a). This makes the judgement of the Court of Appeals Fifth Circuit unsustainable as it does the judgement of the District Court for Midland-Odessa that Federal Home Loan Mortgage Corporation was not a party to the case. The appellant is not the only person that has included Federal Home Loan Mortgage Corporation in his captions, so have its own attorneys (Please see Appendix E, page 21a). Long before any appeal became necessary. Also, the fact that one may present a Writ to the attorneys of record, it does not necessarily follow that the writ must also be sent to the principal Federal Home Loan Mortgage Corporation.

2. The fact that Texas State Statutes, in particular Texas Property Code Section 51.02 was disregarded by Source One Mortgage Services Corporation, assign of, Federal Home Loan Mortgage Corporation and was also, disregarded by the Court of Appeals Fifth Circuit. This not only violates my rights, given by the Constitution and the State, but also violates State rights as well.

3. Rule 12, of the Federal Rules of Appellate Procedure, and a letter from Charles R. Fulbruge III, Clerk of the Court of Appeals Fifth Circuit ordered on April 19, 1999 that attorneys file a representation statement. Counsel for Source One Mortgage Corporation June Ann Mann disregarded the Rule and the Order and submitted an appearance on December 3, 1999. Two hundred and twenty-two (222) days after counsel had been ordered to appear. Counsel did this without presenting a Motion for good cause, nor did the court on its own Motion order acceptance of the appearance of counsel, in accordance with the Federal Rules of Appellate Procedure, Rule 2. Suspension of Rules. Therefore, violating Federal Rules of Appellate Procedure and its own directives.

4. The fact that the court sent the original filling of the appeal to the District Court for the Western District of Texas two and one half months after the Order Granting Motion for Relief from Automatic Stay Prejudice Against Refiling for 180 days on September 30, 1998, as an appeal from the Order for Summary Dismissal for Failure to Timely Commence Payments Under Debtor's, Appellant's, Plan terminating said Bankruptcy on October 20, 1998 by the Trustee. To the Midland-Odessa Division of the Western District of Texas insured that appellant would be unable to find his appeal and so obtain an injunction to stop the sale of his home. The appellant finally had to submit the request for injunction to the same Judge that had previously ordered the lifting of the

automatic stay from sale. Chief Justice Larry E. Kelly is culpable of neglect, in that it took an unreasonable and unexplained lapse of time to send the appeal to its proper jurisdictional District Court. That the appellant could not obtain an injunction from a District Judge being unable to find his appeal that had been sent to Midland - Odessa, 341 miles away from his home in the County of El Paso, Texas (Please see Appendix F, page 25a).

For these four reasons the Supreme Court of the United States should intervene and reverse the judgment by Judges E. Grady Jolly, Edith H. Jones, and Fortunato P. Benavides. Who upheld the lower District Court's judgement, that Federal Home Loan Mortgage had not been a party to the Bankruptcy proceedings in El Paso, Texas.

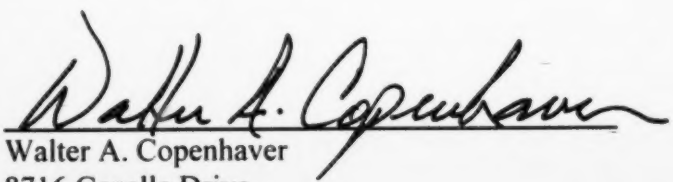
CONCLUSION

The petition for a writ of certiorari should be granted.

The Importance of this Case to the Public

If we consider how many people (the public) become economically distressed by ill health, loss of employment, family problems. And we think how the Banks manipulate the law to their own ends, we should weep for those who cannot fight for those rights that have been given to them and can only pack and leave for God knows where. If there is Law (I will not speak of Justice), then let it serve those who have need of it. Let it not, be trampled into the dust along with our dignity. If you will take the time to read and study the appendixes I have presented you will see they are true.

Respectfully Submitted,



Walter A. Copenhaver
8716 Gazelle Drive
El Paso, Texas 79925 - 4912
Pro Se

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APPENDIXES

APPENDIX A

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DATED AND FILED APRIL 12, 2000

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 99-50377

WALTER A. COPENHAVER,

Appellant

v.

SOURCE ONE MORTGAGE SERVICES CORPORATION,
Its Successors And/or Assigns,

Appellee.

Appeal from the United States District Court for the
Northern District of Texas
USDC No. EP: 98-CA-502-F

BEFORE: Jolly, Jones, and Benavides, Circuit Judges.

PER CURIAM: *

---

* Pursuant to 5TH Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH Cir. R. 47.5.4.

ORDER

I

Walter Copenhaver has appealed the district court's dismissal of his petition for Chapter 13 bankruptcy protection. Both parties have also filed a series of motions. We dispose of all outstanding motions herein and affirm the district court.

Copenhaver filed for Chapter 13 bankruptcy in July 1998. Source One Mortgage Services Corporation then filed a motion for relief from automatic stay in order to foreclose on Copenhaver's residence. After a hearing, the bankruptcy court granted relief to Source One on September 30, allowing the foreclosure to proceed. On October 30, Copenhaver Filed a notice of appeal with the bankruptcy court, which dismissed his bankruptcy case on the same day. Copenhaver immediately sought to enjoin the foreclosure sale, but the bankruptcy court did not rule on that motion until after the sale on November 3, 1998. On November 13, Copenhaver filed a motion seeking a fifteen-day continuance to file his designation of issues on appeal. But on December 1, the bankruptcy court denied this motion, ruling that the original notice of appeal had been untimely. In the same order, the bankruptcy court denied Copenhaver's request for an injunction because the case had been dismissed, eliminating the bankruptcy court's jurisdiction. Source One later asked the district court to dismiss Copenhaver's appeal as untimely and moot, which the district court did on March 15, 1999.

II

We first address the various motions before us.

First, appellant's motion to relieve Attorney June Ann Mann is DENIED.

Second, appellant's motion to strike the appearance form of June Ann Mann is DENIED.

Third, appellant's motion to strike appellee's brief is DENIED.

Fourth, appellant's motion to strike appellee's response/opposition filed December 30, 1999, is DENIED.

Fifth, appellant's motion to supplement the record on appeal with a copy of the bankruptcy court docket sheet is DENIED.

Sixth, appellant's motion to file supplemental record excerpts is DENIED.

Seventh, appellant's motion for summary judgment is DENIED.

Eighth, appellant's motion to relieve Attorneys June Ann Mann and Peter Curran for failure to enter a timely appearance is DENIED.

Ninth, appellant's motion that Source One Mortgage Corporation not be allowed any prosecution or action entered by June Ann Mann or Peter Curran is DENIED.

Tenth, appellee's motion to strike all of appellant's pleadings containing improper captions is DENIED.

III

Copenhaver challenges the district court's dismissal of his appeal for untimeliness under Fed. R. Bankr. P. 8002 (a). That rule requires filing of the notice of appeal within ten days of the date of entry of the judgement, order, or decree appealed from. Copenhaver waited thirty days.

Copenhaver now asserts that his notice of appeal was timely because the United States is a party, and that for that reason, Fed. R. App. P. 4 (a)'s extension of the deadline to sixty days governs. But the United States is not a party here. Although Copenhaver has included the Federal Home Loan Mortgage Corporation ("Freddie Mac") in the caption in recent filings, this entity was not involved in the suit from the beginning, and Copenhaver has not served Freddie Mac with his brief in this appeal. Rule 8002 (a), therefore, applies, making Copenhaver's notice of appeal untimely. The failure to file a timely notice of appeal deprives the district court of jurisdiction[1] to consider the appeal, and this court therefore lacks jurisdiction over the merits. In re Don Vincente Macias, Inc., 168 F.3d 209, 210 (5th Cir. 1999), cert. denied, 68 USLW 3178 (U.S. Nov. 8, 1999) (No. 99-458).[2]

IV

For the reasons stated herein, the district court's decision is

AFFIRMED.

---

[1] Copenhaver has challenged the district court's jurisdiction over his appeal because of improper venue. This is irrelevant, because we have already held that the district court lacked jurisdiction based on Copenhaver's failure to file a timely notice of appeal.

[2] Moreover, any appeal at this point is moot because Copenhaver failed to obtain a stay before the sale of his property. See Gilchrist v. Wescott, 891 F.2d 559, 560 (5th Cir 1990) (an appeal after sale of property in absence of a stay is moot).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS EL PASO DIVISION

DATED AND FILED MARCH 15, 1999

No. EP:98-CA-502-F

The Matter of:

Walter Alexander Copenhaver

Debtor

Walter Alexander Copenhaver

Appellant

SOURCE ONE MORTGAGE SERVICES CORPORATIONS, ITS SUCCESSORS AND ASSIGNS

Appellee

FINAL JUDGEMENT

On this day the court entered its Order Dismissing Appellant's Appeal as untimely and moot. The court now enters its Final Judgment in accordance with Rule 58 of the Federal Rules of Civil Procedure.

It is ORDERED that the Appellant's Appeal be DISMISSED WITH PREJUDICE.

It is ORDERED that the parties BEAR THEIR OWN COSTS.

It is ORDERED that all pending motions be DENIED AS MOOT.

Signed this 12th day of March, 1999.

s/ (Royal Furgeson)
ROYAL FURGESON
UNITED STATES DISTRICT JUDGE

APPENDIX C

U.S. BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS (EL PASO) DOCKET
AS OF JANUARY 12, 2000.

A TRUE COPY, I CERTIFY
(Signed: Laura S. Resendez)
DEPUTY CLERK

U.S. Bankruptcy Court
Western District of Texas (El Paso)

Bankruptcy Petition #: 98-31219

Date Filed: 7/6/98 Date Terminated: 9/17/99
Assigned to: Chief Bkcy Judge Larry E. Kelly
Chapter 13 voluntary asset

* Attorneys *

Walter Alexander Copenhaver
8716 Gazelle Drive
El Paso, Texas 79925
SN: 465-02-6173
* Debtor *

Walter Alexander Copenhaver
PRO SE

PHYLLIS BRACHER, Trustee
P. O. Box 26668
El Paso, Texas 79926-6668
* Trustee *

Proceedings Include events between 1/1/31 and 1/12/00 Closed

Proceedings Include events between 1/1/31 and 1/12/00 Closed

98-31219 In Re: Walter Alexander Copenhaver

07/06/98 1 Voluntary Chapter 13 Petition Filed With NO Schedules ; Proofs Of Claims (govt) Due: 1/4/99. ($160.00; # 30009731) (lr) [EOD 07/06/98]

07/21/98 2 Schedules And Summary. (lr) [EOD 07/22/98]

07/21/98 2 Chapter 13 Plan. (lr) [EOD 07/22/98]

07/21/98 2 Statement of Financial Affairs. (lr) [EOD 07/22/98]

07/29/98 3 First Meeting of Creditors Set For 9:30 8/10/98 At El Paso Suite 135; Proofs Of Claims Due 11/9/98 And Certificate of Service By Chapter 13 Standing Trustee ***THE DEBTOR 'S CASE WAS FILED INCOMPLETE. THE PLAN OR A SUMMARY OF SUMMARY OF THE PLAN AND NOTICE CONFIRMATION WILL BE SENT SEPARATELY***. (lr) [EOD 07/29/98]

08/06/98 4 Ex Parte Motion By Debtor Walter Alexander Copenhaver To Dismiss Original Petition for Forcible Detainer; NO OBJECTION LANGUAGE (lr) [EOD 08/06/98]

08/07/98 5 Order Requiring Service. If the Certificate of Service on Ex Parte Motion to Dismiss "Original Petition for Forcible Detainer," is timely filed, a hearing on the Motion Shall be Held on August 26, 1998 at 10:00 a.m. in the United States Bankruptcy Court, Western District of Texas, El Paso Division, 8515 Lockheed, El Paso, Texas. (lr) [EOD 08/07/98]

08/07/98 6 Certificate Of Service By Walter Alexander Copenhaver for Debtor Walter Alexander Copenhaver Of [4-1] Motion To Dismiss Original Petition for

Docket as of January 12, 2000 4:46 pm

Proceedings Include events between 1/1/31 and 1/12/00 Closed

98-31219 In Re: Walter Alexander Copenhaver

Forcible Detainer; NO OBJECTION LANGUAGE by Walter Alexander Copenhaver . (lr) [EOD 08/07/98]

08/13/98 7 Response By Creditor Federal Home Loan Mortgage Corporation To [4-1] Motion To Dismiss Original Petition for Forcible Detainer; NO OBJECTION LANGUAGE by Walter Alexander Copenhaver (mv) [EOD 08/13/98]

08/24/98 8 Response By Creditor Source One Mortgage Services To [4-1] Motion To Dismiss Original Petition for Forcible Detainer; NO OBJECTION LANGUAGE by Walter Alexander Copenhaver (lr) [EOD 08/24/98]

08/26/98 9 Motion By Creditor Source One Mortgage Services For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) (lr)[EOD 08/26/98]

08/26/98 10 Notice of Appearance And Request For Service Of Notice By June Ann Mann for Creditor Source One Mortgage Services. (lr) [EOD 08/26/98]

08/26/98 11 Order Granting with Conditions [4-1] Motion To Dismiss Original Petition for Forcible Detainer**IT IS ORDERED BY THIS COURT THAT THE MOVANTS IN CASE NO. F498-622 BEFORE JUSTICE COURT, EL PASO COUNTY, TEXAS, PRECINCT 4 TAKE IMMEDIATE STEPS TO DISMISS SAME***; NO OBJECTION LANGUAGE by Walter Alexander Copenhaver. (lr) [EOD 08/26/98]

08/31/98 -- To Consider And Act Upon The Following: . . . . . [9-1] Motion For Relief From Stay of Act Against

Docket as of January 12, 2000 4:46 pm

98-31219 In Re: Walter Alexander Copenhaver

Property Based Upon Multiple Bankruptcy Filings ($75.00; #30000051) by Source One Mortgage Services; Hearing Set For 9:30 9/15/98 At El Paso Courtroom #1.....ANY EXHIBIT WHICH THE PARTIES MAY WANT THE COURT TO CONSIDER MUST BE FILED WITH THE CLERK 7 DAYS PRIOR TO HEARING....MAIL EXHIBITS TO U.S. BANKRUPTCY COURT, ATTN: PETE GUERRERO, 903 SAN JACINTO BLVD., STE. 22, AUSTIN, TEXAS 78701....IF TIME ESTIMATE EXCEEDS 20 MINUTES, PLEASE CALL LAW CLERK. (pg) [EOD 08/31/98]

09/02/98 12 BNC's Certificate Of Mailing Re: [0-0] Hearing [9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30000051) by Source One Mortgage Services; Hearing Set For 9:30 9/15/98 At El Paso Courtroom #1.....ANY EXHIBIT WHICH THE

PARTIES MAY WANT THE COURT TO CONSIDER MUST BE FILED WITH THE CLERK 7 DAYS PRIOR TO HEARING....MAIL EXHIBITS TO U.S. BANKRUPTCY COURT, ATTN: PETE GUERRERO, 903 SAN JACINTO BLVD., STE. 322, AUSTIN, TEXAS 78701....IF TIME ESTIMATE EXCEEDS 20 MINUTES, PLEASE CALL LAW CLERK. . # of Notices: 5. (adkt) [EOD 09/03/98]

09/14/98 13 Motion By Walter Alexander Copenhaver for Debtor Walter Alexander Copenhaver To Continue Hearing Re: ([9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30000051). (jm) [EOD 09/15/98]

09/15/98 -- To Consider And Act Upon The Following: . . . . . [9-1] Motion For Relief From Stay of Act

Docket as of January 12, 2000 4:46 pm

Proceedings Include events between 1/1/31 and 1/12/00 Closed
98-31219 In Re: Walter Alexander Copenhaver

Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services; Hearing Reset To 11:00 9/30/98 At El Paso Courtroom #1***PRELIMINARY HEARING HELD*** (lr) [EOD 09/21/98]

09/28/98 14 Affidavit Of Kay Downer, In Support of [9-1Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00;#30010051) by Source One Mortgage Services . (lr) [EOD 09/28/98]

09/30/98 15 Order Denying [13-1] Motion To Continue Hearing Re: ([9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30000051) by Walter Alexander Copenhaver. (lr) [EOD 09/30/98]

09/30/98 16 Motion By Debtor Walter Alexander Copenhaver To Strike [14-1] Affidavit by Source One Mortgage Services; NO OBJECTION LANGUAGE. (lr) [EOD 09/30/98]

09/30/98 17 Order Granting [9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services. (lr) [EOD 10/01/98]

09/30/98 -- Hearing Held Re: [9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services***GRANTED-ORDER SIGNED***. (lr) [EOD 10/13/98]

10/02/98 18 BNC's Certificate Of Mailing Re: [15-1] Order Denying [13-1] Motion To Continue Hearing Re: ([9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30000051)) by Walter Alexander Copenhaver . # of Notices: 2. (adkt) [EOD 10/08/98]

Proceedings Include events between 1/1/31 and 1/12/00 Closed

98-31219 In Re: Walter Alexander Copenhaver

Docket as of January 12, 2000 4:46 pm

10/20/98	19	Order For Summary Dismissal Of Case For Failure To Timely Commence Payments Under Debtors Plan. (mp) [EOD 10/20/98]
10/22/98	20	BNC's Certificate Of Mailing Re: [19-1] For Summary Dismissal Order . # of Notices: 2. (adkt) [EOD 10/23/98]
10/30/98	21	Notice Of Appeal By Walter Alexander Copenhaver Re: [17-1] Order Granting [9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services ; Appeal Designation Due: 11/9/98 ($ 105.00; # 30010424). (lr) [EOD 10/30/98]
10/30/98	22	Certificate of Mailing Re: [21-1] Notice Appeal by Walter Alexander Copenhaver # of notices: 6. (lr) [EOD 10/30/98]
10/30/98	23	Certificate Of Service By Walter Alexander Copenhaver for Debtor Walter Alexander Copenhaver Of [21-1] Notice Appeal by Walter Alexander Copenhaver . (lr) [EOD 11/02/98]
11/02/98	24	Motion By Debtor Walter Alexander Copenhaver To Petition Injunction Under "Notice Of Appeal" Due To Immediate And Irreparable Harm", Regarding [17-1] Order Granting [9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services Pending Appeal. (mv) [EOD 11/02/98]

Docket as of January 12, 2000 4:46 pm

Proceedings Include events between 1/1/31 and 1/12/00 Closed

98-31219 In Re: Walter Alexander Copenhaver

11/03/98 25 Certificate Of Service By Trustee Phyllis Bracher Of [19-1] For Summary Dismissal Order . (mv) [EOD 11/03/98]

11/10/98 26 Trustee's Final Report Following Dismissal. (lr) [EOD11/10/98]

11/13/98 27 Motion By Debtor Walter Alexander Copenhaver For Extension Of Time To File Appeal Designation; NO OBJECTION LANGUAGE. (mv) [EOD 11/16/98]

11/25/98 28 Appellee Designation By Source One Mortgage Services Of contents And Issues For Inclusion In record On Appeal Re: [21-1] Notice Appeal by Walter Alexander Copenhaver; Transmission Due:12/28/98. (lr) [EOD 11/30/98]

12/04/98 29 Order Denying [27-1] Motion For Extension Of Time To File Appeal Designation; NO OBJECTION LANGUAGE by Walter Alexander Copenhaver, Denying [24-1] Motion To Petition Injunction Under "Notice Of Appeal" Due To Immediate And irreparable Harm", Regarding [17-1] Order Granting[9-1] Motion For Relief From Stay of Act Against Property Base upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services Pending Appeal by Walter Alexander Copenhaver. (lr) [EOD 12/04/98]

12/16/98 30 Certification of Transmission of Record on Appeal to District Court Re: [21-1] Notice Appeal by Walter Alexander Copenhaver . (lr) [EOD 12/16/98]

Docket as of January 12, 2000 4:46 pm

Proceedings Include events between 1/1/31 and 1/12/00 Closed

98-31219 In Re: Walter Alexander Copenhaver

01/11/99 31 Notice of Docketing Record On Appeal Re: [21-1] Notice Appeal by Walter Alexander Copenhaver. (Civil Dkt #: EP-98-CA-502-F) (lr) [EOD 01/11/99]

03/30/99 32 [17-1] Final Order By Judge ROYAL FERGESON Re: Order Granting [9-1] Motion For Relief From Stay of Act Against Property Based Upon Multiple Bankruptcy Filings ($75.00; #30010051) by Source One Mortgage Services. DENIED AS MOOT (Civil Dkt # 98-CA-502-F) (lr) [EOD 03/30/99]

09/17/99 -- Case Closed. (lr) [EOD 09/17/99]

Docket as of January 12, 2000 4:46 pm

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APPENDIX D

THE TEXAS STATUTES

PROPERTY CODES

SUBTITLE B. LIENS

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO LIENS

Sec. 51.002. Sale of Real Property Under Contract Lien.

(a) A sale of real property under a power of sale conferred by a deed of trust or other contract lien must be a public sale at auction held between 10 a.m. and 4 p.m. of the first Tuesday of a month. The sale must take place at the county courthouse in the county in which the land is located, or if the property is located in more than one county, the sale may be made at the courthouse in any county in which the property is located. The commissioners court shall designate the area at the courthouse where the sales are to take place and shall record the designation in the real property records of the county. The sale must occur in the designated area. If no area is designated by the commissioners court, the notice of sale must designate the area at the courthouse where the sale covered by that notice is to take place, and the sale must occur in that area.

(b) Notice of the sale, which must include a statement of the earliest time at which the sale will begin, must be given at least **21 days before** the date of the sale:

(1) by posting at the courthouse door of each county in which the property is located a written notice designating the county in which the property will be sold;

(2) by filing in the office of the county clerk of each county in which the property is located a copy of the notice posted under Subdivision (1); and

(3) by the holder of the debt to which the power of sale is related serving written notice of the sale by certified mail on each debtor who, according to the records of the holder of the debt, is obligated to pay the debt.

(c) The sale must begin at the time stated in the notice of sale or not or not later than three hours after that time.

(d) Notwithstanding any agreement to the contrary, the holder of the debt shall serve a debtor in default under a deed of trust or other contract lien on real **property used as the debtor's residence with written notice by certified mail stating that the debtor is in default under the deed of trust or other contract lien and giving the debtor at least 20 days to cure the default before notice of sale can be given under Subsection (b)**. The entire calendar day on which the notice required by this subsection is given, regardless of the time of day at which the notice is given, is included in computing the 20-day notice period required by this subsection, and the entire calendar day on which notice of sale is given under Subsection (b) is excluded in computing the 20-day notice period.

(e) Service of a notice under this section by certified mail is complete when the notice is deposited in the United States mail, postage prepaid and addressed to the debtor at the debtor's last known address as shown by the records of the holder of the debt. The affidavit of a person knowledgeable of the facts to the effect that service was completed is prima facie evidence of service.

(f) Each county clerk shall keep all notices filed under Subdivision (2) of Subsection (b) in a convenient file that is available to the public for examination during normal business hours. The clerk may dispose of the notices after the date of sale specified in the notice has passed. The clerk shall receive a fee of $2 for each notice filed.

(g) The entire calendar day on which the notice of sale is given, regardless of the time of day at which the notice is given, is included in computing the 21-day notice period required by Subsection (b), and the entire calendar day of the foreclosure sale is excluded.

Acts 1983, 68th Leg., p. 3525, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 3(b), eff. Oct. 2, 1984; Acts 1987, 70th Leg., ch. 540, Sec. 1, eff. Jan. 1, 1988; Acts 1993, 73rd Leg., ch. 48, Sec. 5, eff. Sept. 1, 1993.

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APPENDIX E

IN THE UNITED STATES BANKRUPTCY
COURT FOR THE WESTERN
DISTRICT OF TEXAS
EL PASO DIVISION

FILED
AUG 13 1998
U.S. BANKRUPTCY COURT
BY (M) DEPUTY

CASE NO. 98 - 31219 - 13

In Re:
WALTER A. COPENHAVER
DEBTOR

vs.

SOURCE ONE MORTGAGE SERVICES,
FEDERAL HOME LOAN MORTGAGE
CORPORATION and JACK O'BOYLE

RESPONSE OF FEDERAL HOME LOAN MORTGAGE AND JACK O'BOYLE AND ASSOCIATES TO DEBTOR'S MOTION TO DISMISS

TO THE HONORABLE JUDE OF SAID COURT:

COME NOW FEDERAL HOME LOAN MORTGAGE CORPORATION and Jack O'Boyle & Associates (Respondents) and files this response to Debtor's Motion to Dismiss, and for such response would show unto this court the following:

1. Prior to August 10, 1998, Respondents were not aware of Debtor's bankruptcy petition. However, on July 14,1998, a PACER search was conducted under the name Walter Copenhaver which did not disclose this bankruptcy. A PACER search run on August 10, confirms the allegations in paragraph one of Debtor's motion.

2. Respondents admit paragraph 2.

3. Respondents admit the allegations of paragraph three but state that they were not aware of the bankruptcy filing until August 10.

4. Respondent's deny paragraph four of the debtor's motion in so far as it alleges that the Debtor notified Jack O'Boyle or Federal Home Loan Mortgage of this bankruptcy filing. Respondent's admit the balance of paragraph four.

5. Respondent's admit that Jack O'Boyle sent a notice to vacate to Debtor. Respondent's deny that Debtor left a message on the voice mail number set forth in paragraph five.

6. Respondent's deny the allegations of paragraph six.

7. Respondent's deny the allegations of paragraph seven.

8. On August 10, 1998, after learning of this bankruptcy, Respondents dismissed the forcible detainer petition. A copy of the facsimile dismissal sent to the justice court is attached. As such, Debtor's motion is moot.

WHEREFORE, PREMISES CONSIDERED, Respondents pray that this Court deny the relief sought by Debtor. Respondents pray for such other and further relief to which they may show themselves justly entitled.

Respectfully submitted:

JACK O'BOYLE & ASSOCIATES

By: s/ (Jack O'Boyle)
JACK O'BOYLE
BAR No. 15165300
P. O. BOX 815369
Dallas, Texas 75381
(972) 280-0477 FAX (972) 280-0569

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APPENDIX F

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

FILED
1998 DEC 30 P 4:38
CLERK U.S. DISTRICT
COURT WESTERN DISTRICT
OF TEXAS
BY s/(M)

CIVIL DOCKET NO. EP-98-CA-502-F

IN THE MATTER OF:

Walter Alexander Copenhaver
BANKRUPT

Walter Alexander Copenhaver
APPELLANT

NOTICE OF DOCKETING RECORD ON APPEAL

vs.

Phyllis Bracher
APPELLEE

TO: ALL PARTIES

Today, 12/18/98 **, the Record on Appeal in this cause has been entered on the docket of the United States District Court for the Western District of Texas, El Paso Division (in reference to,** Walter A. Copenhaver **filed on** 12/18/98 **), and assigned to the Honorable** Judge Royal Furgeson **.**

States District Court for the Western District of Texas, El Paso Division (in reference to, Walter A. Copenhaver **filed on** 12/18/98 **), and assigned to the Honorable** Judge Royal Furgeson .

Unless otherwise directed by court order the filing of briefs on appeal shall be in accordance with Bankruptcy Rule 8009 which provides, in part, the following:

(1) The appellant shall serve and file his brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file his brief with 15 days after service of the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee.

WILLIAM G. PUTNICKI, Clerk
United States District Court

By: Signed (Illegible)
Deputy Clerk